

Before the Board of Zoning Adjustment, D. C.

Application No. 11244, of W. Hayes Brown, III pursuant to Section 8207.2 of the Zoning Regulations, for a special exception to continue the operation of a parking lot at Safeway Store #832, as provided by Section 3101.48 at 5545 Connecticut Avenue, N.W., Lots 74 & 76, Square 1867.

HEARING DATE: January 17, 1973

EXECUTIVE SESSION: June 5, 1973 & December 20, 1973


ORDERED:

THAT ALL FINDINGS OF FACTS, AND OPINION OF THE BOARD'S ORDER DATED JULY 25, 1973, REMAIN THE SAME WITH THE EXCEPTION THAT THE FOLLOWING CONDITION BE ADDED:

1. A twenty-five (25) foot landscaping buffer shall be maintained between the parking area and the east property line.

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT.

ATTESTED BY:


JAMES E. MILLER
Secretary to the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

FINAL DATE OF THIS ORDER: JAN 10 1974

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING - January 17, 1973

Application No. 11244 - W. Hayes Brown, III, Applicant

On motion duly made, seconded and unanimously carried with a vote of 4-0, the following Order of the Board was entered at the meeting of June 5, 1973.

EFFECTIVE DATE OF ORDER

ORDERED:

JUL 25 1973

That the application for the continuation of a special exception for parking at Safeway Store #832, at 5545 Connecticut Avenue, N.W., be CONDITIONALLY GRANTED.

FINDINGS OF FACT:

1. The property is located in an R-1-B District.
2. By Order of this Board made on October 16, 1967, permission was conditionally granted to establish accessory parking, to serve the adjacent Safeway Store at 5545 Connecticut Avenue, N.W. The hours of operation were from 10:00 a.m. until 12:00 midnight, six nights a week and from 10:00 a.m. until 7:00 p.m. on Sunday.
3. There are 92 parking spaces on the lot and often store employees are obliged to park on the nearby residential streets.
4. Derelict baskarts are often carried away from the lot and are abandoned in the neighborhood by patrons.
5. The store is currently undergoing remodeling and enlargement which makes the continued parking lot use more vital.
6. Opposition was registered at the public hearing and petitions in opposition were submitted to the file for the Board's consideration.

OPINION:

The Board is of the opinion that this application will be CONDITIONALLY GRANTED.

We are of the opinion that the continuance of this parking lot will not create any dangerous or otherwise objectionable traffic conditions. The present character and future development of the neighborhood will not be adversely affected. The lot is reasonably necessary and convenient to other uses in the vicinity.

This Order shall be subject to the following conditions:


- a. Safeway will install a basket corral in the immediate vicinity of the store front.
- b. Safeway will direct its employees to park on this lot and not to park on Morrison and McKinley Streets, the adjacent residential streets, nor on such other streets or areas.
- c. Permit shall issue for a period of five (5) years but shall be subject to renewal in the discretion of the Board upon the filing of a new appeal in the manner prescribed by the Zoning Regulations.
- d. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
- e. An eight (8) inch coping shall be erected and maintained along each side of all driveways to protect the public space.
- f. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
- g. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
- h. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
- i. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.

j. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

The Board reserves the right to direct revocation of the occupancy permit upon a proper showing that any terms or conditions of this Order have been violated.

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED:

By: 
JAMES E. MILLER
Secretary of the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

Before the Board of Zoning Adjustment, D. C.

Application of Safeway Stores Inc., pursuant to Section 8207.2 of the Zoning Regulations for a special exception to permit accessory parking in the R-1-B Zone as provided by Section 3101.48 (amended at public hearing to Section 3101.411) at the premise 3725 and 3729 Morrison Street, N. W., known as Lots 74 & 76, Square 1867; application No. 11244.

HEARING DATE: December 18, 1974

DECISION DATE: January 21, 1975

FINDINGS OF FACT:

1. Safeway Stores, Inc. has applied for a special exception that would permit continued use of lots 74 and 76, square 1867 at 3725 and 3729 Morrison Street, N. W. as an accessory parking facility to its grocery store at 5545 Connecticut Avenue, N. W.

2. The Upper Connecticut Avenue Betterment Association ("Association") is a party in opposition to the application (Transcript of the December 18, 1974 hearing ("Tr") at p. 103).

3. The store is located in a C-1 District comprising lots 29, 30, 31, 32, 90, 91, square 1867 p. 34).

4. Lots 74 and 76 are not contiguous to the store, but rather are separated from the store by lot 77, a property zoned R-1-B.

5. In another case, Appeal No. 6517, a special exception was granted permitting use of lot 77 for accessory parking spaces to the Safeway Store. (Letter dated August 1, 1973 from Mr. James J. Fahey of the Zoning Commission to Mr. Thomas Mascolino of the Upper Connecticut Avenue Betterment Association, p. 1; the letter is attached to Reply of the Association in Opposition to Safeway's Motion to Amend its Application).

6. The store parking lot, without lots 74 and 76, has 68 parking spaces, a number sufficient to meet the zoning requirements for a grocery store in a C-1 District. (Fahey letter supra at 2; letter dated January 3, 1975 from Safeway Attorney to Board, p. 2; (Tr. 105, 136, 137).

7. Lots 74 and 76 add 29 parking spaces to the store parking lot (Tr. 90); therefore, the entire parking lot has 97 spaces, with Lots 74 and 76 contributing approximately 30% of the spaces.

8. The store hours are from 9 a.m. to 10 p.m. Monday through Saturday and from 10 a.m. to 6 p.m. on Sunday. (Tr. 94).

9. The Safeway store manager testified that the store parking lot is either full or almost completely full at all times. (Tr. 95)

10. A traffic survey was taken by the Association for several half hour periods during which the number of cars were counted that either traveled west on the 3700 block of Morrison Street, N. W. and then turned right into the store parking lot, or exited the parking lot and then turned east (left) onto Morrison. The survey revealed that on the average 31 cars per half-hour or a little over one car a minute traveled on the 3700 block of Morrison because of the store parking lot (Tr. 115-116). Although this survey was not conducted by traffic experts, it does not require expertise to count the number of cars entering and exiting a parking lot. We therefore find the survey relevant and material.

11. Since the store parking lot is either full or almost completely full at all times according to Safeway, (Tr. 95) and since lots 74 and 76 provide approximately 30% of the parking lots' spaces, it is reasonable to infer, and we do infer, that approximately 30% of the traffic generated on the 3700 block of Morrison, because of the parking lot, is attributable to lots 74 and 76. The results of the survey described in finding No. 10 may, therefore, be broken down as follows: on the average 10 cars per half hour are attributable to lots 74 and 76; 20 cars per half hour are attributable to the remainder of the parking lot.

12. There are 20 children ages 3 to 15 that consistently cross the 3700 block of Morrison Street, N. W. to play with one another (Tr. 117).

13. Approximately 68 residents of the neighborhood signed a petition in opposition to the application. The petition stated that use of lots 74 and 76 as an accessory parking facility has (a) seriously endangered the safety of the children because of increased traffic; (b) attracted customers from areas outside of the neighborhood; and (c) deteriorated the quality of life in the neighborhood.

14. In the spring of 1974, Safeway had an addition built to the store at a cost of \$580,000.00 (Tr. 81).

15. Two Safeway officials, in a discussion with the Association regarding future expansion of the store, said that it was more profitable to operate a regional than a neighborhood store (Tr. 120).

16. A significant number of the cars using the parking lot are from jurisdictions outside the District of Columbia; most of these cars are from Maryland (Tr. 113-114).

17. The Safeway design man testified that the store in question depends for its business upon an area larger than the immediate neighborhood (Tr. 130). He further testified that in his view the store would not close if the application was denied. (Tr. 131)

18. Safeway presented evidence regarding the surface, lighting, layout and structures on the store parking lot (Tr. 69-80). Further, a traffic expert testified for Safeway. We find, however, that his survey with respect to the distribution of traffic as it leaves the store has no probative value whatsoever because during cross-examination he was unable to provide the Board with the number of cars upon which his percentages were based (Tr. 83-90).

CONCLUSIONS OF LAW AND OPINION:

The Board may grant a special exception permitting accessory parking spaces on property in an R-1-B District only if all of the requirements in Sections 8207.2 and 3101.411 of the Zoning Regulations are met. After carefully reviewing and weighing the evidence presented, we conclude that several requirements of these sections have not been satisfied. We therefore deny Safeway's application for a special exception. The requirements that have not been met are discussed in the following paragraphs.

1. Section 3101.411(a) of the Zoning Regulations requires that "(a)ccessory passenger automobile parking spaces elsewhere than on same lot or part thereof on which the main use is permitted--(be) contiguous to or separated only by an alley from the use to which they are accessory" (emphasis deleted). Here the property in question, lots 74 and 76, are neither contiguous to nor separated by an alley from the lots on which the main use (i.e. the store) is permitted. Rather, between lots 74 and 76 and the store is residentially zoned lot 77. Accordingly, the requirement that the parking spaces be contiguous to the main use has not been met.

2. Section 8207.2 of the Zoning Regulations requires that the special exception "be in harmony with the general purpose and intent of the Zoning Regulations and maps." The parking spaces on lots 74 and 76 are designed to serve the Safeway store. The store is located in a C-1 District. The purpose of the C-1 District, inter alia, is to provide "convenient retail and personal establishments for the day-to-day needs of a small tributary area, with a minimum impact upon the surrounding neighborhood." (Zoning Regs. §5101.1). By way of contrast, C-2 Districts, including C-2a and C-2b, are designed to provide shopping areas for larger tributary areas.

In the instant case the store parking lot, without lots 74 and 76, has 68 parking spaces. In our view, this number is more than sufficient to meet the needs of a small tributary area, with minimum impact upon the neighborhood. The 29 spaces added by use of lots 74 and 76 will encourage customers to come from areas beyond the neighborhood--a result contrary to the purpose of the C-1 District in which the store is located. Indeed, the evidence shows that a significant number of the cars using the lot are from jurisdictions outside the District of Columbia.

It appears that Safeway desires to serve an area larger than the immediate neighborhood. In the Spring of 1974, Safeway expanded its store. Further, Safeway officials in discussing future store expansion plans with the Association said that it was more profitable to operate a regional than a neighborhood store. The fact remains, however, that the store is located in a district designed for neighborhood shopping.


3. Section 3101.411(d) of the Zoning Regulations requires that "(s)uch parking spaces are so located and all facilities in relation thereto are so designed that they are not likely to become objectionable to adjoining and nearby property because of noise, traffic or other objectionable conditions" (emphasis deleted).

Traffic surveys conducted by the Association revealed that the store parking lot, without lots 74 and 76, generates approximately 20 cars per hour on the 3700 block of Morrison Street, N. W., a residential street. The surveys further revealed that lots 74 and 76 generate roughly an additional 10 cars per half hour on that block. In our judgment, the increased volume of traffic on the 3700 block of Morrison resulting from lots 74 and 76 has created a dangerous and objectionable condition to neighboring property. Children playing on the block are seriously threatened by the increased traffic.

4. Section 8207.2 requires that the special exception "will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and maps." Here the neighboring property is in a District zoned R-1-B. That District is designed to "promote a suitable environment for family life" (Zoning Reg. 8301.1). As concluded above, use of lots 74 and 76 for accessory parking has not only created a danger to children playing in the neighborhood.

These results, in our view, adversely affect the use of the neighboring property for family living--the use for which it is zoned.

Accordingly, for the foregoing reasons, the application is denied.

ATTESTED BY: 
JAMES E. MILLER,
Secretary to the Board

FINAL DATE OF ORDER:

MAY 16 1975

Before the Board of Zoning Adjustment, D. C. ,

Application No. 11244 of Safeway Stores, Inc., pursuant to Section 8207.2 of the Zoning Regulations, for a special exception to permit accessory parking in the R-1-B Zone, as provided by Section 3101.48 (amended at public hearing to Section 3101.411) at the premises 3725 and 3729 Morrison Street, N. W., known as Lots 74 and 76, Square 1867.

HEARING DATE: December 18, 1975

DECISION DATE: January 21, 1975, August 6, 1975

ORDER

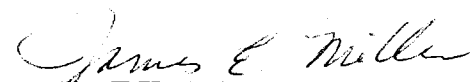
Upon consideration of the Applicant's Motion for Reconsideration and/or Re-hearing of this Board's decision in Application No. 11244, dated May 16, 1975, the Board finds that said Motion fails to state a basis of error on the part of the Board to support the Motion for Reconsideration and to identify new evidence which could not reasonably have been presented at the original hearing which is the basis of a Motion for Rehearing.

Accordingly, it is hereby ORDERED:

That the Applicant's post-hearing appeals fail for the lack of four (4) affirmative votes.

BY ORDER OF D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


JAMES E. MILLER,
Secretary to the Board

FINAL DATE OF ORDER: **001 22 1975**